BOOKS AND PERIODICALS.

CRIMINAL RESPONSIBILITY OF INSANE DRUNKARDS. — It has long been familiar law that mere intoxication is not a defence to a criminal charge; and that certain forms of insanity are defences. 1 HAWK., P. C., c. I. §§ 1, 6. How far insanity caused by intoxication will excuse has not always been equally well settled. Permanent insanity so caused has been invariably held a valid excuse. 1 HALE, P. C., 32. So also has *delirium tremens*. *Reg.* v. *Davis*, 14 Cox, C. C., 563; *People* v. *Rogers*, 18 N. Y. 9. As to the extent to which temporary insanity caused by drunkenness negatives culpability, an instructive discussion is found in a late English periodical. *Drunkenness and Crime*, by R. W. Lee, 27 L. Mag. & Rev. 144 (Feb., 1902). The author professes to record a change in the English law. He asserts that formerly temporary insanity resulting from intoxication was not a defence under the English law, but that it now is a defence and rightly so. Pertinent *dicta* are cited which lend color to such a suggestion, but in actual decision he finds no early case holding that temporary insanity is not an excuse and no modern case holding that temporary insanity, aside from *delirium tremens*, is an excuse. *Cf. Rennie's Case*, 1 Lew. 76, and *Reg.* v. *Davis*, *supra*. The conclusion, then, that the law has undergone a change on the point seems somewhat hasty.

In support of the general proposition that temporary insanity should be a defence, the author cites only cases of *delirium tremens*. Even if this disease can be regarded as a temporary insanity, as seems not impossible, his position is certainly too broad and undiscriminating. It would be interesting to see with what consistency he would apply his doctrine to the case where insanity is an immediate concomitant of intoxication, — as it is said to be in some abnormal subjects, either because of some injury or because of peculiar nervous susceptibility, — and where therefore the insanity is just as probable a consequence as the drunkenness itself. See 2 TAYL., MED. JUR., 4th ed., 596; 3 TWENT. CENT. PRAC. MED., 11, 12. His position seems still more doubtful when it is remembered that from a pathological standpoint mere intoxication and some forms of insanity are largely identical and that the line separating drunkenness and temporary insanity caused by drunkenness is exceedingly vague. See KERR, INEBRIETY, 3d ed., 15 *et seq.*

The author's statement finds little support in America. In this country, temporary insanity resulting immediately from intoxication — leaving *delirium tremens* aside — is said to be no defence. *State* v. *Hundley*, 46 Mo. 414. It is true that *delirium tremens* has not failed of excusing in any well-considered case. And yet as an original matter it would be hard to see why some victims even of this disease should not be punished, more especially when the attack of the disease is not the first. The English courts recognize *delirium tremens* as a defence on the ground that it is a secondary and not a primary consequence of drinking. *Reg.* v. *Davis*, *supra*. Some American courts regard it as a settled insanity, or what Lord Hale termed a "fixed frenzy," and dispose of it on that ground. *People* v. *Rogers*, *supra*. Others allege that it supervenes only upon a period of abstinence, and so find no difficulty in excusing. *Kelley* v. *State*, 31 Tex. Cr. Rep. 216. But these reasons seem inadequate, especially the last; for the notion that *delirium tremens* is caused only by cutting off the drunkard's supply of liquor was long since questioned. 3 TWENT. CENT. PRAC. MED., 13; *cf.* 1 WHART. & ST. MED. JUR., § 203. Only in those instances, then, where *delirium tremens* can fairly be called a remote consequence of drinking, as where it follows a period of abstinence, should it be a defence; otherwise it should not. If insanity follows immediately upon the drunken state, the mere fact that it assumes the form of *delirium tremens* rather than some other form can make no difference in principle and should not excuse.

Such a result seems to violate neither logic nor sound policy. The decisive question should simply be whether in a given case the temporary frenzy can fairly be said to be voluntary. If a drunkard has reason to anticipate as a possible consequence of his intemperance not only intoxication but insanity as well, he should have no defence from either; he has voluntarily put himself in an uncontrollable condition and the policy of the law should hold him to the strictest accountability; to treat him on any other basis would be to protect grossest excess.

LEGALITY OF VOTING TRUSTS. — The view that voting trusts are, as a general rule, illegal as against public policy is defended in a recent article. *Voting Trusts in Corporations*, by E. W. Moore, 36 Am. L. Rev. 222 (March–April, 1902). Mr. Moore quotes with effect from the earlier cases but fails to refer to important recent decisions.

The argument for the intrinsic illegality of voting trusts is that the interests of the state and of the stockholders demand that at least once a year the majority of stockholders shall have an opportunity to determine the corporation's policy. A separation of the voting power and the beneficial interest for a longer period is said to be unwise, and opposed to the policy of the state as shown by statutes providing for annual corporate elections. It is further urged that as the trustees who exercise the control may have no pecuniary interest, such arrangements may result in irresponsible and arbitrary management. See *Harvey* v. *Linville Improvement Co.*, 118 N. C. 693; *Shepaug Voting Trust Cases*, 60 Conn. (Supp.) 553; 1 Yale L. J. 1.

On the other hand, business experience has shown that stability of management may be absolutely essential to success. On the reorganization of a railroad, capitalists cannot be interested nor the desired officers secured if there is no assurance of continuity of policy. Such men are unwilling to rely on the patience and judgment of the ordinary stockholder. It is true that voting trusts make possible control by a minority or by outsiders. Their very object is to make sure that a certain policy shall be continued or a certain set of men retained in office despite the opposition of future majorities. Such a result is inconsistent with the old conception of a corporation; but conditions have changed. The early simple business corporations were under the continuous and direct control of the individual corporators. When such immediate control became impossible as corporations increased in number of stockholders and complexity of management, the delegation of power to a smaller body of experienced men became necessary and the law sanctioned the annual election of directors. Business experience now shows the necessity of allowing the delegation of power for a still longer period. Voting trusts may, undoubtedly, be void for special reasons, as where the aim is unjust personal advantage. *Cone* v. *Russell*, 48 N. J. Eq. 208. But broad grounds of business expediency seem to demand that it should be possible for a majority of stockholders acting in good faith to bind themselves irrevocably for a term of years to support a certain policy. The influence of commercial necessity is apparent in the more liberal attitude toward which the courts are tending. See *Brightman* v. *Bates*, 175 Mass. 105; *Smith* v. *San Francisco & N. P. R. Co.*, 115 Cal. 584; 10 HARV. L. REV. 428.

Mr. Moore points out that the courts have recognized the validity of voting trusts which are for the security of creditors, and distinguishes between agreements for that purpose and for all others. See *Mobile & Ohio R. R. Co.* v. *Nicholas*, 98 Ala. 92. He bases this distinction chiefly on the ground that if the trustees are under the direction of the creditors, the objection that the beneficial interest is separated from the control does not apply. The importance of the distinction is diminished, however, when it is remembered that even in trusts for the benefit of creditors, the control may be given to men who have no beneficial interest. It seems probable that if the courts fail to sustain such arrangements, the desired result will be reached by statute.